

The Commissioner of Income-tax v. Kartar Singh, Truck Owner,
Moga (Mahajan, J.)

period is not the criterion on which the order of extension is to be made. The learned trial Judge in his order under revision has referred to the various authorities under sections 5 and 14 of the Indian Limitation Act and held that as the petitioners were not diligent there was no sufficient cause for extension of time. This approach is entirely wrong. As has been observed earlier, the question of sufficient cause does not arise for consideration under section 37(4) of the Act and what has to be considered is whether refusal to extend the time will cause undue hardship. Since the learned Judge has not considered whether undue hardship would result to the petitioner if the extension of time was refused, it is obvious that he has failed to exercise the jurisdiction, that vested in him, illegally and on wholly erroneous grounds. In this view of the matter, the order under revision cannot be sustained and the case must be remitted to the Senior Subordinate Judge to deal with the application in the light of the provisions of sub-section (4) of section 37 of the Arbitration Act and the observations recorded above. I order accordingly. There will be no order as to costs. The parties are directed to appear before the Senior Subordinate Judge, Hissar, on 16th February, 1970.

N.K.S.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and S. S. Sandhawalia, JJ.

THE COMMISSIONER OF INCOME-TAX,—Petitioner.

versus

KARTAR SINGH, TRUCK OWNER, MOGA,—Respondent.

Income Tax Case No. 3 of 1965.

February 2, 1970.

Indian Income Tax Act (XI of 1922)—Sections 10(2) (vii) and 66(2) —Books of the assessee as mentioned in section 10(2) (vii)—Whether to be of a particular type of accounts—Such books being defective—Whether affects the allowance to be granted under the section—Constitution of India(1950)—Article 226—Writ of mandamus for reference of questions of law in Income-tax matters—Whether not to be issued.

Held, that the expression "books of the assessee" in the context in which it appears in section 10(2) (vii) of the Indian Income Tax Act, 1922, cannot give any indication of the particular type of accounts which the assessee should maintain. That the accounts maintained by the assessee are defective, in the sense that they do not lead to a correct assessment of the income, profits and gains of the business, has nothing whatever to do with the allowance that can be granted under section 19(2) (vii) of the Act.

(Para 4)

Held, that normally speaking, if a matter is settled by a High Court in this country, that should be enough for the purposes of the Revenue and an application for Mandamus for referring questions of law to the High Court shall not be allowed unless another High Court comes to a conclusion that decision is patently erroneous. This avoids multiplicity of decisions on the same question and is really a commendable course.

(Para 4)

Petition under Section 66(2) of the Indian Income Tax Act 1922 made by the Commissioner of Income Tax Punjab, Jammu and Kashmir and Himachal Pradesh, Patiala praying that the Income Tax Appellate Tribunal Delhi Bench New Delhi be directed to refer the following questions of law arising out of its order dated 27th February, 1964 passed in I.T.A. No. 195 of 1963-64 for the opinion of the Hon'ble High Court.

Whether on the facts and in the circumstances of the case, the Tribunal was legally justified in entertaining the so-called Memorandum Book which was never admitted or produced in the assessment proceedings ?

(2) *If the answer to the first question is in the affirmative, whether on the facts and in the circumstances of the case, the requirement of the first proviso to section 10(2) (vii) of Indian Income-tax Act, 1922, was satisfied by the entries in the Memorandum Book?*

D. N. AWASTHY, AND B. S. GUPTA, ADVOCATES, for the petitioner.

H. L. SONI, AND GURPREM SINGH DHILLON, ADVOCATES, for the respondent.

ORDER

MAHAJAN, J.—The Commissioner of Income-tax, Punjab, Jammu and Kashmir and Himachal Pradesh at Patiala, has moved this court under section 66 (2) of the Indian Income-Tax Act, 1922, asking us to issue a *Mandamus* to the Tribunal concerned to refer the following two questions of law for our opinion:—

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was legally justified in entertaining the so-called Memorandum Book which was never admitted or produced in the assessment proceedings?

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(ii) If the answer to the first question is in the affirmative, whether on the facts and in the circumstances of the case, the requirement of the first proviso to section 10 (2) (vii) of the Indian Income-tax Act, 1922, was satisfied by the entries in the Memorandum Book?"

(2) The assessee, an individual, carried on contract business for the supply of ballast. He employed his own trucks for the purpose of the contract business. No accounts of his business were produced by him. His income from such business was assessed by applying a rate on the receipts and depreciation on the trucks. In the assessment year 1960-61, the assessee claimed a loss of Rs. 50,679 under section 10(2) (vii) of the Act. This loss was allowed by the Income-tax Officer by his order dated the 12th of July, 1961. The assessee appealed against the order of the Income-tax Officer on certain other matters. During the course of the hearing, the Appellate Assistant Commissioner noticed that loss of Rs. 50,679 arising in the sale of trucks had been wrongly allowed. He took the view that the assessee had not maintained account-books and so the condition for allowing the loss under the first proviso to section 10(2) (vii) of the Act was not satisfied, inasmuch as the amount should have been actually written off in the books of the assessee. Accordingly, a notice was issued to the assessee to show cause why his income should not be enhanced by the amount of Rs. 50,679. After hearing the assessee, the Appellate Assistant Commissioner enhanced the amount of income by the figure of the loss claimed, by his order dated the 15th of March, 1963. The assessee then appealed to the Tribunal; and the Tribunal reversed the decision of the Appellate Assistant Commissioner and agreed with the Income-Tax Officer in allowing the amount of Rs. 50,679 as loss.

(3) The contention before the Tribunal by the Revenue was that the Memorandum Book produced by the assessee was not a book within the meaning of section 10(2) (vii). This contention was negatived by the Tribunal. The Revenue then moved the Tribunal for reference of the questions already referred to above. This application was rejected by the Tribunal by its order dated the 4th of December, 1964, with the observations that, "on the facts of this case, it could not be stated that the Tribunal was not legally justified in entertaining the said note-book and using it as a piece of evidence in deciding the case. "It is in these circumstances that the present petition has been preferred.

(4) It may be said at the outset that a question of law does arise. But in view of the clear pronouncements of the Madras and Bombay High Courts in *P. Appavu Pillai v. Commissioner of Income-tax Madras*, (1), and *Commissioner of Income-tax, Bombay City-II, v. London Hotel*, (2), we decline the prayer for *Mandamus*. Normally speaking, if a matter is settled by a High Court in this country that should be enough for the purposes of the Revenue, unless this Court comes to a conclusion that that decision is patently erroneous. This avoids multiplicity of decisions on the same question and is really a commendable course. We do not see anything wrong with the view adopted by the Madras High Court. The Revenue has so far taken no steps to assail its correctness by taking the matter to the Supreme Court. That view appeals to common sense and reason. This is what the learned Judges said while dealing with section 10(2) (vii) of the Act:—

“* *The expression “books of the assessee” in the context in which it appears in section 10(2) (vii) cannot give any indication of the particular type of accounts which the assessee should maintain. That the accounts maintained by the assessee are defective, in the sense that they do not lead to a correct assessment of the income, profits and gains of the business, has nothing whatever to do with the allowance that can be granted under section 10(2) (vii). * *”

In the present case, the Memorandum Register was produced which showed the relevant entry regarding the purchase and sale of vehicles wherein the loss had been calculated and written off within the meaning of section 10(2) (vii). The decision of the Madras High Court is fully applicable to the facts of the present case.

(5) In this view of the matter, we see no reason to grant the application for *mandamus*. The application is dismissed but there will be no order as to costs.

S. S. SANDHAWALIA, J.—I agree.

N.K.S.

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- (1) 58 I.T.R. 622.
(2) 68 I.T.R. 62.